

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Pratterra Smith,

Plaintiff,

v.

National Healthcare Corporation,

Defendant.

CIVIL ACTION NO.

NOTICE OF REMOVAL

Comes now Defendant, National Healthcare Corporation (“NHC”), by and through its undersigned legal counsel and pursuant to 28 U.S.C. §§ 1441 and 1446, and hereby removes this action from the Court of Common Pleas in and for Anderson County, South Carolina, to the United States District Court for the District of South Carolina, Anderson Division, and in support of such removal states as follows:

1. This action was commenced in the Court of Common Pleas, County of Anderson, on March 17, 2010, as Case No. 2010-CP-04-01054, and is now pending therein. Thus, venue in this Court is proper pursuant to 28 U.S.C. § 1441(a).

2. Defendant first received a copy of Plaintiff’s Summons and Complaint in this action on or after March 23, 2010.¹ Thus, Defendant’s Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b), as Defendant is filing the same within 30 days of “receipt by the Defendant,

¹ Plaintiff did not properly serve Defendant until April 6, 2010. Plaintiff first attempted to serve Defendant through correspondence dated March 22, 2010, which Plaintiff sent by certified mail, return-receipt requested. However, Plaintiff delivered the March 22, 2010 correspondence to Defendant’s no-longer-valid registered agent. While Defendant did not receive notice of Plaintiff’s claims until approximately April 5, 2010, Defendant uses March 23, 2010, as the trigger date for removal to ensure that the same is timely.

through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.”

3. The events alleged by Plaintiff giving rise to his claim allegedly occurred in Anderson County, South Carolina. Accordingly, venue properly lies in the United States District Court for the District of South Carolina, Anderson Division.

4. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on Defendant are attached hereto as Exhibit 1.

5. In accordance with 28 U.S.C. § 1446(d), Defendant will promptly give written notice of the filing of this Notice of Removal to Plaintiff, the only adverse party, and will also file a Notice of filing this Notice of Removal with the Court of Common Pleas in and for Anderson County, South Carolina, a copy of which is attached hereto as Exhibit 2.

Federal Question Jurisdiction

6. Plaintiff’s first cause of action alleges a claim for “Racial Discrimination [under] 42 U.S.C. 2000 et seq. (Title VII)”, which constitutes a claim “arising under the Constitution, laws, or treaties of the United States.”

7. Plaintiff’s second cause of action alleges a claim for “EEOC/SHAC Retaliation,” which constitutes a claim “arising under the Constitution, laws, or treaties of the United States” together with a claim arising under South Carolina state law.

8. Plaintiff’s third and final cause of action alleges a claim for “Breach of Contract” under South Carolina law.

9. Plaintiff’s claims under South Carolina law do not raise novel or complex issues of state law and do not predominate over Plaintiff’s federal causes of action, but are incident to Plaintiff’s federal causes of action.

10. Therefore, this action is one over which this Court has (a) federal question jurisdiction pursuant to 28 U.S.C. § 1331, in that Plaintiff's first and second causes of action assert claims "arising under the Constitution, laws, or treaties of the United States;" and (b) supplemental jurisdiction pursuant to 28 U.S.C. § 1367, in that Plaintiff's claims under South Carolina law are part of the same case or controversy and are thus determinable by this Court in conjunction with Plaintiff's federal causes of action.

WHEREFORE, on the basis of the foregoing, Defendant respectfully submits that removal of this action from the Court of Common Pleas in and for Anderson County, South Carolina, to this Court is proper.

Dated this the 22nd day of April 2010.

Respectfully submitted,

s/Thomas H. Keim, Jr.
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Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Thomas H. Keim, Jr., hereby certify that a copy of the foregoing Notice of Removal has been served upon Plaintiff by placing a copy of the same in the United States Mail, certified, return-receipt requested, with the correct amount of postage affixed thereon and properly addressed to:

John G. Reckenbeil, Esq.
215 Magnolia Street
Spartanburg, South Carolina 29306

Dated this the 22nd day of April 2010.

s/Thomas H. Keim, Jr.

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